

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

July 25, 2006

The Rhode Island Ethics Commission held its 14th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, July 25, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair Richard E. Kirby
Barbara Binder, Vice Chair James C. Segovis
George E. Weavill, Jr., Secretary Ross Cheit
James V. Murray**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Dianne Leyden and Commission Investigators Peter J. Mancini and Michael Douglas. The Respondent was present with his legal counsel, Lauren A. Jones, Esq.

At approximately 9:24 a.m., the Chair opened the meeting.

The first order of business was Adjudication/Disposition of the matters of In re: John A. Celona, Complaint Nos. 2003-9, 2004-4 and 2004-8. The proceedings were stenographically transcribed and the transcript is available at the Commission Offices.

Commission Prosecutor Gramitt provided the Commission with an overview of the disposition proceedings and requested consolidation of Complaint Nos. 2003-9, 2004-4 and 2004-8 and the Orders and Findings of Probable Cause. Attorney Jones stated that he had no objection. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

VOTED: To consolidate Complaint Nos. 2003-9, 2004-4 and 2004-8 and the Orders and Findings of Probable Cause

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Commission Prosecutor Gramitt requested consolidation of Counts 9 and 10 of the Order and Findings of Probable Cause in Complaint No. 2003-9 with Count 1 of the Order and Findings of Probable Cause in Complaint No. 2004-4, to form a single Count to be referred to as “Count 10 of the Consolidated Orders and Findings of Probable Cause,” which he read into the record. He explained that it would be appropriate to charge a single violation with respect to the disclosure

of income sources for calendar year 2002 and noted that his motion was expressly conditioned upon the Respondent's admission to the ten Counts in the Consolidated Findings of Probable Cause. Attorney Jones agreed. Upon motion made and duly seconded, it was unanimously

VOTED: To consolidate Counts 9 and 10 of the Order and Findings of Probable Cause in Complaint No. 2003-9 with Count 1 of the Order and Findings of Probable Cause in Complaint No. 2004-4 to form a single Count to be referred to as "Count 10 of the Consolidated Orders and Findings of Probable Cause."

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Commission Prosecutor Gramitt next requested that the Commission dismiss Count 3 of the Order and Findings of Probable Cause in Complaint 2003-9 and Count 3 of the Order and Findings of Probable Cause in Complaint No. 2004-8, both of which related to the failure to file recusal statements. He explained that the Respondent will be admitting to the substantive violations from which these recusal allegations flow. Attorney Jones stated that his client understands that dismissal is expressly conditioned upon his admission to the ten Consolidated Counts. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To dismiss Count 3 of the Order and Findings of Probable Cause in Complaint No. 2003-9 and Count 3 of the Order and Findings of Probable Cause in Complaint No. 2004-8.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Commission Prosecutor Gramitt advised that the remaining ten Counts are now contained in the Consolidated Findings of Probable Cause. Chair Lynch asked Attorney Jones whether he had advised the Respondent of his rights, the consequences of his admissions to violations of the Code of Ethics and possible penalties that may be imposed. Attorney Jones replied in the affirmative and further questioned his client as to his understanding and waiver of his rights. Chair Lynch read each of the 10 Consolidated Findings of Probable Cause into the record and inquired as to the Respondent's plea. As to each Consolidated Count, the Respondent admitted to a knowing and willful violation.

At Chair Lynch's request, Commission Prosecutor Gramitt recounted sufficient facts adduced during the investigation which he was prepared to prove at trial to support the ten Counts. Upon motion made and duly seconded by Commissioner Murray, it was unanimously

VOTED: That the Respondent committed the violations enumerated in the Consolidated Findings of Probable Cause.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Chair Lynch announced that the Commission would hear from Attorney Jones as to the imposition of penalties. Attorney Jones advised that he had submitted a memorandum as to the penalty phase, with an attached affidavit that he would file with the Clerk at the conclusion of the proceedings. He requested that the Commission treat the financial records attached thereto as confidential and seal such records at the proceeding's conclusion. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray, there was discussion. Commission Prosecutor Gramitt advised that he had no objection to sealing the financial records. In response to Commissioner Kirby, Attorney Jones indicated that he submitted the financial records to substantiate leniency on the penalty issue and noted that courts have recognized a general interest in the privacy of financial records. Upon the original motion, it was unanimously

VOTED: That the financial records submitted with the Respondent's Affidavit be sealed.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C.

Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

The Commission heard from Attorney Jones regarding the imposition of penalties. He related that the Respondent admits to serious violations and accepts responsibility before the Commission and in federal court. He noted that the Respondent has cooperated with federal investigators and the Commission. He suggested that the Commission take into account the Respondent's ability to pay and that he has a dependent spouse and two children. Attorney Jones also pointed out the likelihood of further, substantial penalties to be imposed by the federal court.

Commission Prosecutor Gramitt stated that the penalty must be proportionate with the offense, but agreed that the Commission should consider the Respondent's cooperation and his financial circumstances. He advised that the Commission should first determine how egregious and willful the violations were. He informed that the Commission may impose a penalty of up to \$25,000 per violation and argued that this was the most egregious conduct he had seen before the Commission, which would support imposition of a high penalty. Commission Prosecutor Gramitt argued that the Respondent's conduct was also on the far end of the scale as to willfulness. He informed that the highest fine that could be imposed would be \$25,000 per offense.

Commission Prosecutor Gramitt noted that it also would be

appropriate to consider the Respondent's cooperation and financial situation and acknowledged his significant cooperation with the Commission and the U.S. Attorney's Office. He discussed that these factors may support reducing a penalty of \$25,000 per offense, for a fine of \$250,000, to a total penalty of \$85,000. In response to Commissioner Kirby, he stated that it is appropriate for the Commission to conclude its proceedings with penalty imposition rather than wait until the federal sentencing is completed. In response to Commissioner Segovis, he informed that the Commission previously imposed a \$30,000 penalty against former Governor DiPrete for two separate matters, which was reduced to \$15,000 when the Supreme Court overturned its decision as to one matter.

Commissioner Cheit inquired whether the Respondent's initial denial of the allegations and holding onto his Senate seat would be relevant to the Commission's considerations. Attorney Jones related that the Respondent did resign and made early attempts to resolve the matters before the Commission. In response to Commissioner Weavill, he stated that that he did not represent the Respondent before the Commission regarding a prior advisory opinion request and noted that there have been no allegations made regarding that opinion. In further response to Commissioner Weavill, Attorney Jones and Commission Prosecutor Gramitt detailed the amounts the Respondent received from his consulting arrangements in each year.

Chair Lynch informed the Respondent of his right to make a pre-sentencing statement to the Commission. The Respondent addressed the Commission, apologizing and accepting full responsibility for his conduct. He expressed his regret for his actions and their impact upon his family, former constituents and the citizens of Rhode Island. He asked the Commission to give whatever consideration it deems appropriate to his admissions and cooperation with the Commission and federal investigators.

At 10:49 a.m., upon motion made by Commissioner Segovis and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4) to deliberate the imposition of a civil penalty.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

At 12:00 a.m. the Commission reconvened in Open Session. Chair Lynch requested that members of the media allow sufficient time to set up their equipment in the future so as not to be disruptive of the proceedings. Chair Lynch asked for a vote as to each of the Counts. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray, it was unanimously

VOTED: To impose a penalty of \$25,000 as to Complaint No. 2003-9, Count 1.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray, it was unanimously

VOTED: To impose a penalty of \$25,000 as to Complaint No. 2003-9, Count 2.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

As to Complaint No. 2004-8, Count 1, Commissioner Binder stated that \$25,000 would be an appropriate penalty, but suggested reducing it to \$10,000 due to the Respondent's cooperation, remorse and admissions. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To impose a penalty of \$10,000 as to Complaint No. 2004-8, Count 1.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

As to Complaint No. 2004-8, Count 2, Commissioner Binder stated that \$25,000 would be a fair penalty, but suggested reducing it to \$15,000 due to the Respondent's cooperation, remorse and admissions. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To impose a penalty of \$15,000 as to Complaint No. 2004-8, Count 2.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

As to Complaint No. 2003-9, Count 4, Commissioner Binder stated that \$25,000 would be a fair penalty, but suggested reducing it to \$10,000 due to the Respondent's cooperation, remorse and admissions. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To impose a penalty of \$10,000 as to Complaint No. 2003-9, Count 4.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Upon motion made by Commissioner Binder and duly seconded by

Commissioner Cheit, it was unanimously

VOTED: To impose a penalty of \$7,500 as to Complaint No. 2003-9, Count 5.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To impose a penalty of \$7,500 as to Complaint No. 2003-9, Count 6.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To impose a penalty of \$10,000 as to Complaint No. 2003-9, Count 7.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To impose a penalty of \$10,000 as to Complaint No. 2003-9, Count 8.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To impose a penalty of \$10,000 as to Complaint No. 2003-9, Counts 9 and 10 and Complaint 2004-4, Count 1.

AYES: James Lynch, Sr., Richard E. Kirby, Barbara Binder, James C. Segovis, George E. Weavill, Jr., Ross Cheit and James V. Murray.

At 12:15 p.m., motion made by Commissioner Kirby and duly seconded, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., Richard E. Kirby, George E. Weavill, Jr., Frederick K. Butler, James C. Segovis and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.

Secretary